

# EXHIBIT

# 11

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS

*Plaintiff,*

vs.

ERIC H. HOLDER, JR.,

*Defendant.*

Case No. 1:12-cv-00128  
RMC-DST-RLW

**NOTICE OF LEGISLATIVE PRIVILEGE ASSERTION**

The Department of Justice and Intervenors are seeking depositions or documents from 30 current or former state legislators. All of these persons have decided to assert state legislative privilege except Representative Craig Eiland. In addition, these individuals maintain that the Supreme Court's decision in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), independently bars testimony regarding legislatively privileged subject matter absent "extraordinary instances," which are not present in this case.

Each individual intends to assert the privilege to cover the categories of communications the State has claimed privilege over as the Court's order recounts. Accordingly, the state legislators will not answer questions or produce documents regarding confidential communications with their fellow legislators, the members of their staff, or their constituents. They will

answer deposition questions regarding non-privileged matters of public record. Non-confidential communications, such as colloquies between legislators that occurred during the floor debate over SB14 are not privileged and will not draw an objection if the Defendants seek to discover them. And the legislators will of course comply with any order from this Court compelling discovery.

The State legislators are not parties to this lawsuit. As Texas made clear to DOJ weeks ago, DOJ should subpoena the legislators that it wishes to depose. See Fed. R. Civ. P. 45; see also March 30, 2012 Letter from Jonathan F. Mitchell, Solicitor General of Texas, to Elizabeth S. Westfall. But DOJ failed to do so. It is now apparent to the State and its legislators that litigating this issue will prolong discovery and possibly delay the trial date that the Court has set for July 9, 2012. In the interests of expediting discovery and preserving the trial date, the legislators will agree to appear for depositions without the need for a subpoena.<sup>1</sup> By appearing for depositions, however, the legislators are not waiving their rights under *Arlington Heights* or their legislative privilege.

---

<sup>1</sup> In addition, Representative Leo Berman is currently undergoing a course of chemotherapy and is unable to participate in a deposition at this time.

Respectfully submitted.

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Solicitor General

MATTHEW H. FREDERICK  
Assistant Attorney General  
ADAM W. ASTON  
ARTHUR C. D'ANDREA  
Assistant Solicitors General  
PATRICK SWEETEN  
Assistant Attorney General  
209 West 14th Street  
P.O. Box 12548  
Austin, Texas 70711-2548  
(512) 936-1695

COUNSEL FOR PLAINTIFF  
THE STATE OF TEXAS

## CERTIFICATE OF SERVICE

I certify that on April 24, 2012, I served the foregoing via CM/ECF on the following counsel of record:

Elizabeth Stewart Westfall, David J. Freeman, Bruce I. Gear  
U.S. DEPARTMENT OF JUSTICE  
Civil Rights Division, Voting Section  
950 Pennsylvania Avenue, NW  
NWB-Room 7202  
Washington, DC 20530  
(202) 305-7766/Fax: (202) 307-3961  
Email: [elizabeth.westfall@usdoj.gov](mailto:elizabeth.westfall@usdoj.gov)  
Email: [daniel.freeman@usdoj.gov](mailto:daniel.freeman@usdoj.gov)  
Email: [bruce.gear@usdoj.gov](mailto:bruce.gear@usdoj.gov)

Jennifer Lynn Maranzano  
U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 305-0185  
Email:  
[jennifer.maranzano@usdoj.gov](mailto:jennifer.maranzano@usdoj.gov)  
*Counsel for the United States*

Chad W. Dunn  
BRAZIL & DUNN  
4201 FM 1960 West, Suite 530  
Houston, TX 77068  
(281) 580-6310  
Email: [chad@brazilanddunn.com](mailto:chad@brazilanddunn.com)

J. GERALD HEBERT  
191 Somerville Street, #405  
Alexandria, VA 22304  
Telephone: 703-628-4673  
Email: [hebert@voterlaw.com](mailto:hebert@voterlaw.com)  
*Counsel for Eric Kennie, Anna Burns, Michael Montez, Penny Pope, Marc Veasy, Jane Hamilton, David De La Fuente, Lorraine Birabil, Daniel Clayton, and Sergio Deleon*

Mark A. Posner  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
1401 New York Avenue, NW, Suite 400  
Washington, DC 20005  
(202) 307-1388  
Email:  
[mposner@lawyerscommittee.org](mailto:mposner@lawyerscommittee.org)

Ezra D. Rosenberg *Pro Hac Vice*  
Michelle Hart Yeary  
DECHERT LLP  
902 Carnegie Center, Suite 500  
Princeton, NJ 08540  
(609) 955-3200/Fax: (609) 955-3259  
Email: [ezra.rosenberg@dechert.com](mailto:ezra.rosenberg@dechert.com)  
Email: [michelle.yeary@dechert.com](mailto:michelle.yeary@dechert.com)

Ian Vandewalker *Pro Hac Vice*  
Myrna Perez  
Wendy Weiser  
THE BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL  
161 Avenue of the Americas, Floor 12  
New York, NY 10013-1205  
Tel: (646) 292-8362  
Fax: (212) 463-7308  
Email: [ian.vandewalker@nyu.edu](mailto:ian.vandewalker@nyu.edu)  
Email: [myrna.perez@nyu.edu](mailto:myrna.perez@nyu.edu)  
Email: [wendy.weiser@nyu.edu](mailto:wendy.weiser@nyu.edu)

JOHN K. TANNER  
3743 Military Road, NW  
Washington, DC 20015  
202-503-7696  
Email: [john.k.tanner@gmail.com](mailto:john.k.tanner@gmail.com)

MOFFATT LAUGHLIN  
McDONALD  
NANCY GBANA ABUDU  
KATIE O'CONNOR  
American Civil Liberties Union  
Foundation, Inc.  
230 Peachtree Street, NW  
Suite 1440  
Atlanta, Georgia 30303-1227  
(404) 523-2721/(404) 653-0331 (fax)  
Email: [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org)  
Email: [nabudu@aclu.org](mailto:nabudu@aclu.org)  
Email: [koconnor@aclu.org](mailto:koconnor@aclu.org)

LISA GRAYBILL  
REBECCA ROBERTSON  
American Civil Liberties Union  
Foundation of Texas  
1500 McGowan Street  
Houston, Texas 77004  
(713) 942-8146  
Email: [lgraybill@aclutx.org](mailto:lgraybill@aclutx.org)  
Email: [rrobertson@aclutx.org](mailto:rrobertson@aclutx.org)

PENDA HAIR  
KUMIKI GIBSON  
Advancement Project  
1220 L Street, NW, Suite 850  
Washington, DC 20005  
(202) 728-9557  
[phair@advancementproject.org](mailto:phair@advancementproject.org)  
[kgibson@advancementproject.org](mailto:kgibson@advancementproject.org)  
*Counsel for Texas Legislative Black  
Caucus, the League of Women Voters  
of Texas, the Justice Seekers,  
Reverend Peter Johnson, Reverend  
Ronald Wright and Donald Wright*

Myrna Perez *Pro Hac Vice*  
Ian Vandewalker *Pro Hac Vice*  
THE BRENNAN CENTER FOR  
JUSTICE AT  
NYU LAW SCHOOL  
161 Avenue of the Americas, Floor 12  
New York, NY 10013-1205  
(646) 292-8329 / (212) 463-7308 (fax)  
Email: [myrna.perez@nyu.edu](mailto:myrna.perez@nyu.edu)  
Email: [ian.vandewalker@nyu.edu](mailto:ian.vandewalker@nyu.edu)

Victor L. Goode  
NAACP National Headquarters  
4805 Mt. Hope Dr.  
Baltimore, Maryland 21215-3297  
(410) 580-5120 (phone)  
Email: [vgoode@naacpnet.org](mailto:vgoode@naacpnet.org)

Robert S. Notzon  
The Law Office of Robert Notzon  
1507NuecesSt.  
Austin, Texas 78701  
(512) 474.7563 (phone)  
Email: [Robert@notzonlaw.com](mailto:Robert@notzonlaw.com)

Jose Garza  
Law Office of Jose Garza  
7414 Robin Rest Dr.  
San Antonio, Texas 98209  
(210) 392-2856 (phone)  
Email: [garzpalm@aol.com](mailto:garzpalm@aol.com)  
*Counsel for Texas State Conference of  
NAACP Branches, Mexican American  
Legislative Caucus of the Texas House  
of Representatives*

Ryan Haygood *Pro Hac Vice*  
Natasha M. Korgaonkar  
Leah C. Aden  
Debo P. Adegbile  
Dale E. Ho  
NAACP Legal Defense and  
Educational Fund, Inc.  
99 Hudson Street, Suite 1600  
New York, New York 10013  
(212) 965-2200 / (212) 226-7592 (fax)  
Email: [rhaygood@naacpldf.org](mailto:rhaygood@naacpldf.org)  
Email: [nkorgaonkar@naacpldf.org](mailto:nkorgaonkar@naacpldf.org)  
Email: [laden@naacpldf.org](mailto:laden@naacpldf.org)  
Email: [dho@naacpldf.org](mailto:dho@naacpldf.org)  
Email: [dadegbile@naacpldf.org](mailto:dadegbile@naacpldf.org)

FRIED, FRANK, HARRIS,  
SHRIVER & JACOBSON LLP  
Douglas H. Flaum  
Michael B. de Leeuw  
One New York Plaza  
New York, New York 10004-1980  
(212) 859-8000  
Email:  
[douglas.flaum@friedfrank.com](mailto:douglas.flaum@friedfrank.com)  
Email: [michael.deleeuw@friedfrank.com](mailto:michael.deleeuw@friedfrank.com)  
*Counsel for Texas League of Young  
Voters Education Fund, Imani  
Clark, KiEssence Culbreath,  
Demariano Hill, Felicia Johnson,  
Dominique Monday, and Brianna  
Williams*

Nina Perales  
MEXICAN AMERICAN LEGAL  
DEFENSE & EDUCATIONAL FUND,  
INC.  
110 Broadway, Suite 300  
San Antonio, TX 78205  
(210) 224-5476 / 210-224-5382 (fax)  
Email: [nperales@maldef.org](mailto:nperales@maldef.org)  
*Counsel for Mi Familia Vota  
Education Fund, Southwest Voter  
Registration Education Project, Nicole  
Rodriguez, Victoria Rodriguez*

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Solicitor General